

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2002 JUL 30 P 3:25
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**NCS HEALTHCARE OF MARYLAND, INC., an
Ohio corporation, d/b/a APPLE INSTITUTIONAL
PHARMACY
3201 Enterprise Parkway, #220
Beachwood, Ohio 44122
Attn: Marybeth Levine/David Stacy**

Plaintiff,

Case No. JFM 01 CV 2915

vs.

**McCREADY FOUNDATION, INC.,
a Maryland Corporation, d/b/a THE
EDWARD T. McCREADY MEMORIAL
HOSPITAL, d/b/a PEYTON
PSYCHOGERIATRIC CENTER, and
d/b/a ALICE BYRD TAWES
NURSING HOME.**

**Serve On: Jack A. Willing, Jr., Esq .
11739 Somerset Ave.
P.O. Box 567
Princess Anne, MD 21853**

Defendants.

**ORDER DENYING JUDGMENT DEBTOR'S MOTION FOR RELEASE
OF PROPERTY AND ORDER RE
JUDGMENT OF CONDEMNATION ABSOLUTE
WITH RESPECT TO WRIT OF GARNISHMENT**

UPON THE Judgment Debtor/Defendant's "Motion for Release of Property and Denial of Plaintiff's Motion for Condemnation Absolute" (the "Motion") and the Response of Plaintiff and Judgment Creditor NCS Healthcare of Maryland, a hearing having been held by the Court, and Capitol Securities Management, Inc., and Wilmington Trust, FSB appearing by counsel, the Court finding:

- a. that Plaintiff has complied with the Maryland Rules and timely moved for Judgment of Condemnation Absolute, as such rules are adopted by Fed. R. Civ. P. 69,
- b. that Plaintiff concedes that Wilmington Trust, FSB has a control agreement with respect to assets held by Capitol Securities Management, Inc. held in accounts SF81656 and SF81657, which control agreement is dated prior in time to the date of service of the Writ of Garnishment ("Writ") issued by this Court on April 11, 2002, which Writ was served on April 11, 2002,
- c. that the Writ in favor of Plaintiff attached to assets held by Capitol Securities Management, Inc.,
- d. that based on the representation of Capitol Securities Management, Inc., the present value of funds on hand in at least one account may be less than the sum of the amount of \$977,959.22 due to Wilmington Trust, FSB, and \$466,643.45 (the amount of the Judgment of Condemnation Absolute), and that therefore all assets held by Capitol Securities Management, Inc. should be immediately liquidated as agreed by Wilmington Trust, FSB,
- e. further, this Order being subject to the rights, if any, of the United States of America, Department of Agriculture, ("USDA"), the parties having concluded that there is no subordination of Wilmington Trust FSB to USDA as posited by the Debtor's officer, counsel for the Debtor having no knowledge of any subordination agreement, and that the only subordination is the attached subordination agreement by the USDA in favor of Wilmington Trust FSB, which agreement does not subordinate any interest of Wilmington Trust, FSB

to any position of USDA, the parties having searched their records and having found no control agreement with respect to the USDA, and the attached financing statements on file with Maryland State Department of Assessments and Taxation filed by the USDA not perfecting any interest in investment securities or investment property, it is this 30th day of July, 2002, hereby ORDERED:

- A. Per the Court's direction at the hearing on July 25, 2002, and pursuant to the outstanding Writ of Garnishment and Judgment of Condemnation Absolute, all assets in any form held by Capitol Securities Management, Inc. in the name of or for the benefit of McCready Foundation, Inc., including in accounts SF81656 and SF81657, shall be immediately liquidated to cash and cash equivalents and placed in an FDIC insured-interest bearing account;
- B. The sum of Nine hundred seventy-seven thousand, nine hundred fifty-nine dollars and twenty-two cents (\$977,959.22) shall be held for the benefit of Wilmington Trust, FSB, and if and when directed by Wilmington Trust, FSB, delivered to Wilmington Trust, FSB, c/o Wilmington Trust Company, Mr. John Olsen, Esq. or his written designee, Wilmington Trust, FSB, 1100 N. Market St., Rodney Square North, Wilmington, Delaware 19890, with the simultaneous further distribution to Wilmington Trust, FSB of the amount of two hundred eight dollars and seventy-one cents (\$208.71) per day through date of distribution to Wilmington Trust, FSB.

- C. All remaining proceeds of amounts held by or liquidated by Capitol Securities Management, Inc., up to \$466,643.45, shall be simultaneously delivered to NCS Healthcare of Maryland, Inc., Attn: Judith Greenstone Miller, Raymond & Prokop, P.C., 26300 Northwestern Highway, 4th Floor, P.O. Box 5058, Southfield, Michigan 48086-5058 or her written designee.
- D. All deliveries shall be by wire transfer or by cashier's or certified check transmitted by overnight delivery with written confirmation of same being made to the parties.
- E. Within three business days of this order, Capitol Securities Management, Inc. shall deliver a certified copy and accounting of the proceeds received from the liquidation of all assets held on July 25, 2002, and a statement of the scope of all assets held at the close of business on July 15, 2002 to all counsel and will assist, if needed, to determine such values.



UNITED STATES DISTRICT JUDGE
J. FREDERICK MOTZ

CC:
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